

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 4264 of 1997****For Approval and Signature:****HONOURABLE MR.JUSTICE D.A.MEHTA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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TRIKAMBHAI LAXMANBHAI PRAJAPATI - Petitioner(s)
Versus
STATE OF GUJARAT & 8 - Respondent(s)

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Appearance :

MR DHIRENDRA MEHTA for Petitioner(s) : 1,
MR.PRADIP D. BHATE AGP for Respondent(s) : 1 - 2.
NOTICE SERVED for Respondent(s) : 3 - 6, 9,
MR PJ VYAS for Respondent(s) : 7 - 8.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA**Date : 10/04/2006****ORAL JUDGMENT**

1.This petition, though styled as a petition under Articles 226 and 227 of the Constitution of India, is in effect, a petition under Article 227 of the Constitution of India

challenging the order dated 18.04.1994 made by the Gujarat Revenue Tribunal in the Revision Application No.TEN/BS/163/84 (Annexure-D).

2.The petitioner herein is the heir of the original applicant who moved an application on 23.09.1981 seeking declaration as a tenant under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act,1948 (hereinafter referred to as the 'Act'). Thereafter, evidence was led by both the sides and the Mamlatdar Court vide order dated 26.02.1982 accepted the application moved by late Laxmanbhai Nathabhai, father of the petitioner. However, the landlord, late Shri Devchandbhai Ratanjibhai (who is represented by the heirs being respondent Nos.3 to 6 herein) went in appeal before the Deputy Collector, Olpad, District Surat. After hearing both the sides, vide order dated 31.05.1982 in Appeal No.13 of 1982, the appeal was allowed and the matter remanded for re-examination of the record and granting

opportunity to both the sides to lead evidence.

3. Thereupon, the Mamlatdar permitted both the sides to lead evidence and ultimately vide order dated 21.12.1982, held that the petitioner was not able to establish his status as a tenant in relation to the land bearing Block No.104 admeasuring 2 acres 01 guntha. The petitioner carried the matter in appeal before the Deputy Collector, Olpad, District Surat, but did not succeed. The Deputy Collector vide order dated 30.04.1984 confirmed the order made by the Mamlatdar Court against which, the petitioner preferred a Revision Petition before the Tribunal. It is the impugned order of the Tribunal dated 18.04.1994 that is assailed by way of this petition.

4. Mr.D.K. Mehta, learned advocate appearing on behalf of the petitioner strenuously urged that the Tribunal had committed an error in confirming the order made by the Deputy Collector. That the Tribunal had failed to

appreciate the evidence in right perspective and had drawn unwarranted presumption. In support of the submission, he read extensively from the first order made by the Mamlatdar Court on 26.02.1982. It was urged that the authority had categorically come to the conclusion, after appreciating the evidence of the witnesses, that the petitioner was cultivating the land in question up to 1980-1981 and, therefore, had rightly drawn a presumption that the same was in the capacity as a tenant. According to him, in the second round, all the three authorities had incorrectly read the statement made in the written submissions dated 14.10.1982, wherein an offer had been made to purchase the land at the rates specified in the sale deed executed by the respondent Nos.3 to 6 in favour of the respondent Nos.7 to 9; that the offer was to purchase the land, at the rates fixed, after the petitioner was declared to be a tenant on

the disputed land. He, therefore, urged that all the three authorities having failed to appreciate the evidence in right perspective, the impugned order of the Tribunal was required to be quashed and set aside and it be declared that late Shri Laxmanbhai, father of the petitioner, and the petitioner herein were the tenants of the land bearing block No.104 admeasuring 2 acres 01 guntha situated at village Digas, District Surat.

5. Section 76 of the Act permits filing of a Revision Application on any of the grounds mentioned in clauses (a), (b) or (c) of the said Section and only in such circumstances, the Tribunal is empowered to exercise jurisdiction. Therefore, the impugned order of the Tribunal is required to be examined in light of the said provisions only.

6. Both the authorities below namely Mamlatdar and the Deputy Collector have found that the petitioner has failed to make out any case of

being a tenant, in absence of any evidence showing that any rent was actually paid. It has further been found that there was no evidence regarding crop sharing; that there was nothing to show on record that the petitioner had either handed over 50% of the crops or the sale proceeds thereof to the landlord at any point of time. This finding is recorded despite there being some ambivalent finding as to cultivation of the disputed land being undertaken by the petitioner. It has further been found from the evidence on record that there is no entry in the entire record of rights even showing that the petitioner has been in occupation of the disputed land, much less any evidence regarding cultivation. The authorities have also taken into consideration the record in relation of consolidation proceedings which took place before the application was moved by the deceased father of the petitioner under Section 70(b) of the Act. In the said proceedings, it

has been categorically recorded that the land admeasuring 0 acres 8 gunthas of block No.104/A is in occupation and possession of the petitioner. As against that in relation to the disputed land bearing block No.104, the land owner, Shri Devchandbhai has been shown to be in occupation and possession.

7.The Tribunal in its impugned order, has taken note of the aforesaid findings recorded by the Mamlatdar and the Deputy Collector. It has further noted the fact that the land revenue has been paid by the land owner and at no point of time, the petitioner has been able to show that either the petitioner had paid the land revenue or was in occupation of the disputed land in any manner whatsoever. It has further been recorded by the Tribunal that there is no evidence led on behalf of the petitioner that entries reflected in the record of rights are incorrect in any manner whatsoever or that any proceedings to challenge such entries have been

initiated.

8. In the aforesaid circumstances, it is apparent that neither Clause (a) nor Clause (b) of Section 76 of the Act can be said to be applicable in the facts of the present case. Similarly, in so far as applicability of Clause (c) of Section 76 of the Act is concerned, it is not possible to come to the conclusion that there was any substantial defect in following the procedure which has resulted into miscarriage of justice, or that there has been failure to take evidence which has resulted into miscarriage of justice, or that there has been any error in appreciating the important evidence which has resulted into miscarriage of justice. None of the conditions stipulated in Clause (c) of Section 76 of the Act are shown to have been satisfied.

9. The petition, in the circumstances, does not merit acceptance and is accordingly rejected. Rule is discharged. There shall be no order as

to costs.

(D.A.MEHTA, J.)

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